

REMARKS

In the outstanding Final Office Action, claims 1, 3-5, 7, 21, 23, 25-27 and 29-30 were rejected under 35 U.S.C. §103(a) over DUNN et al. (U.S. Patent No. 5,916,302) in view of BERKLEY et al. (U.S. Patent No. 6,546,005). Claim 24 was rejected under 35 U.S.C. §103(a) over DUNN in view of BERKLEY, and further in view of KUKUOKA et al. (U.S. Patent No. 5,914,940). Claim 28 was rejected under 35 U.S.C. §103(a) over DUNN in view of BERKLEY, and further in view of DeSIMONE et al. (U.S. Patent No. 6,138,144).

Upon entry of the present amendment, all of claims 1-30 will have been cancelled, and claims 31-44 will have been newly presented for examination.

The cancellation of claims should not be considered an indication of Applicant's acquiescence as to the propriety of any outstanding rejection. Rather, Applicant has cancelled claims 1-30 and added new claims 31-44 in order to advance prosecution and obtain early allowance of claims in the present application. Nevertheless, Applicant traverses the previous rejections insofar as any of new claims 31-44 recites features similar to the features previously recited in claims 1-30.

Independent claim 31 recites a feature of determining a configuration of customer premise equipment for the calling party and customer premise equipment for the called party. Claim 40 recites a similar feature. These claims also recite features that a separate, parallel virtual data channel is established when the customer premise equipment is compatible.

Neither DUNN nor BERKLEY disclose at least features of determining configurations of customer premise equipment and then establishing a separate, parallel virtual data channel when the customer premise equipment of the calling party and called party is compatible. In this regard, a configuration of customer premise equipment is not analogous to characteristic

information of a party using the customer premise equipment. Further, a data channel in DUNN and BERKLEY is not established contingent on a determination of compatibility of customer premise equipment.

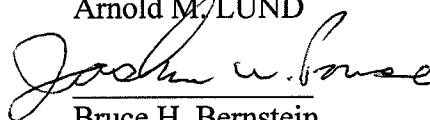
Therefore, if DUNN or BERKLEY is cited in a new rejection as disclosing either such features of claim claims 31 and 40, the Examiner is requested to specify exactly how these documents are being interpreted as disclosing such features.

Claims 31 and 40 also recite additional features that are believed distinguishable, in the claimed combinations, from the teachings of DUNN and BERKLEY. Nevertheless, insofar as DUNN and BERKLEY specifically do not disclose at least the particular features of claims 31 and 40 noted above, these claims are allowable over the documents of record in the present application. New claims 32-39 and 41-44 are allowable at least for depending, directly or indirectly, from an allowable independent claim, as well as for additional reasons related to their own recitations.

Any amendments to the claims in this paper, which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
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